City of London Law Society Competition Law Committee: Response to the Department for Business and Trade's Consultation on Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement (Chapter 2)

1. Introduction

1.1 The Competition Law Committee of the City of London Law Society (**"CLLS"**) welcomes the opportunity to comment on the consultation by the Department for Business and Trade (now the Department for Business, Innovation, Science and Trade) on Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement (the **"Consultation"**), published on 17 July 2026.

1.2 The CLLS represents approximately 17,000 City solicitors through individual and corporate membership including some of the largest international law firms in the world. The Competition Law Committee (the **"Committee"**) comprises leading solicitors specialising in UK and EU competition law in a number of law firms based in the City of London, who act for UK and international businesses, financial institutions, and regulatory and government bodies in relation to competition law matters.

1.3 The Committee members responsible for the preparation of this response are:

(a) Jonny Ford, Linklaters

(b) Ian Giles, Norton Rose Fulbright

(c) Nicole Kar, Paul, Weiss, Rifkind, Wharton & Garrison

(d) Dominic Long. A&O Shearman

(e) Isabel Taylor, Slaughter and May

1.4 This response is confined to the proposals set out in Chapter 2 of the Consultation, which addresses proposals to change the regulatory appeals framework.

2. General Observations on Chapter 2

2.1 The Committee understands why greater consistency in the regulatory appeals framework might in principle seem a reasonable and practical reform. A well-functioning appeals process is essential to ensuring that regulatory decisions are robust, proportionate and command the confidence of investors and consumers alike, and it is undoubtedly the case that there are inconsistencies between the different regimes. However, the Committee has significant concerns about the scope and pace of the reforms proposed in Chapter 2, and considers that the case for the changes as currently formulated has not been adequately made out.

2.2 The proposals in Chapter 2 are substantial. They would effect a fundamental restructuring of the appellate framework for regulatory decisions, transferring jurisdiction from the Competition and Markets Authority (**"CMA"**) to the Competition Appeal Tribunal (**"CAT"**), altering the standard of review, changing the available remedies, and modifying the rules on eligibility, intervention and costs. The implications of these proposals for businesses in regulated industries, investors, and consumers are far reaching and in the Committee's view, the evidence

base presented in support of the case for change, for the specific proposals, and the exploration of alternative means of addressing these objectives, is not commensurate with their significance.

2.3 A particular concern is the potential effect on investor confidence and the cost of capital in regulated sectors. The regulatory appeals framework provides an important check on regulatory decision-making and underpins the willingness of investors to commit capital to UK infrastructure. The current regimes have reached the point of maturity that they are broadly understood and explicable to investors. There is a risk that fundamental structural change at this juncture would disrupt well-functioning processes and generate unnecessary uncertainty, without a corresponding improvement in outcomes. If the proposed reforms are perceived as weakening the rigour or accessibility of the appeals process, or introduce material uncertainty on this point, this could have serious consequences for investment in essential services.

2.6 To the extent that the objectives are principally to do with consistency across regimes, or indeed to address other specific issues with the practical operation of the regimes, the Committee considers that this could in many instances be achieved through smaller, more targeted amendments to address specific issues, rather than the wholesale restructuring currently proposed. Such an approach would preserve the benefits of existing arrangements whilst delivering the desired degree of harmonisation/efficiency gain.

3. Appellate Body (Questions 44 to 46)

Question 44: Should Regulatory Appeals be transferred to the CAT?

3.1 No. The Committee does not consider that a case has been made out for the transfer of regulatory appeals from the CMA to the CAT. The principal reasons for this view are:

(a) The CMA has developed substantial expertise and institutional infrastructure for handling regulatory appeals. This includes specialist panel members with deep knowledge of utility regulation and network economics, dedicated staff economists, and established administrative support functions. This specialist capacity has been built up over a considerable period and cannot readily be replicated elsewhere.

(b) Concerns about CMA resourcing are not, of themselves, a sufficient justification for transferring jurisdiction to another body that may lack equivalent capacity. The CAT has a demanding existing workload and is supported by a team of approximately 23 staff, in contrast to the CMA's workforce of around 1,000. The CAT does not presently possess the specialist expertise in regulated sectors that the CMA has developed through its Specialist Utility Group and within the CMA staff teams (although we note that the intention would be to consider the recruitment of additional Ordinary Members with sector-specific expertise).

(c) The transfer would represent a fundamental shift in the character of regulatory appeals, from an inquisitorial, business-led process to an adversarial, lawyer-led one. Under the current CMA regime, appellants and their specialist advisors are able to participate directly in the proceedings and present evidence in their own right. The norm in the CAT is counsel-led advocacy and formal legal proceedings. We would expect this to increase costs for all parties as well as altering the nature of the scrutiny applied to regulatory decisions.

(d) Price control decisions directly affect consumers and have significant implications for competition in regulated markets. Their scrutiny is consistent with the CMA's broader statutory duties in respect of competition and consumer welfare as well as the Strategic Steer which emphasises the role of the CMA in supporting investment and economic growth as well as consumer benefit. The Committee does not agree with the comments in the Consultation that these activities do not sit naturally as part of the CMA's remit and does not consider that the Consultation has explained why removing these appeals from the CMA's remit would be appropriate.

(e) Regulatory appeals often (but not exclusively) relate to price control settlements that typically take place every 5-7 years. Precedent on these appeal regimes has therefore been built up slowly, but the regimes have reached a state of greater maturity in recent review cycles. Disrupting the framework at this point would generate significant legal uncertainty and risk undermining the progress that has been made in clarifying the applicable principles. This uncertainty could be exacerbated by introducing a new body to hear these appeals at the same time as introducing wide ranging changes to the underlying review standard, as well as undermining the value of the precedent developed to date.

(f) As noted in the Committee's general observations, if the Government's objective is principally one of consistency, this could be achieved through more targeted reforms that do not require altering the identity of the decision-maker.

Question 45: Should the CAT have jurisdiction to determine price control matters in Telecoms?

3.3 No. We would leave in place the existing arrangements in relation to telecoms for the same reason as for other appeals. These arrangements are established and understood and we are not aware of significant calls for change.

Question 46: Would any amendments to the CAT Rules be necessary to ensure that Regulatory Appeals can be heard fairly and efficiently?

3.4 If the transfer of regulatory appeals to the CAT were to proceed, the Committee considers that amendments to procedural rules and practice directions would be required. The following matters, in particular, would need to be addressed:

(a) **Statutory timetable**: The current energy appeals regime operates within strict statutory timeframes, which are designed to ensure that appeals are resolved at a sufficiently early stage in the relevant price control period for the outcome to be given practical effect. The Consultation does not propose any equivalent statutory timetable for CAT proceedings and, without any provision on this point, there is a risk that the resolution of appeals becomes prolonged, increasing uncertainty for businesses and investors.

(c) **Pleadings and permission stage**: Under the current CMA procedure, appellants are required to set out their full case at the permission stage. If proceedings are transferred to the CAT, the Committee considers that a staged approach to submissions would be more proportionate, with a summary of the grounds of appeal at the permission stage and the full case presented after permission has been granted. This would need to be

supported by guidelines on length and content to ensure that it does not become an additional cost in the process, but appropriately managed could reduce the front-loaded costs burden on appellants without compromising the tribunal's ability to filter unmeritorious claims.

(d) **Specialist expertise**: A mechanism would be needed to ensure that CAT panels hearing regulatory appeals include members with substantive knowledge of utility regulation, network economics and the operation of regulated businesses. The CMA's current Specialist Utility Group provides a model for the type of expertise that would need to be available. As discussed above, consideration would also need to be given to the level of staff support that would be available to the CAT on complex regulatory appeals. Without such a mechanism and support, there is a real risk that the quality and rigour of appellate scrutiny would diminish.

(e) **Expert evidence**: The CAT's Practice Direction 3/2025 on expert evidence may present difficulties in the context of price control appeals, where appellants typically appoint economic and technical advisers to assist in the primary regulatory process. Guidance or modification of the practice direction may be needed to ensure that such experts – who in many cases will have the best view of the technical analysis - are not excluded or discouraged from giving evidence.

(f) **Hearings and direct participation**: Under the current CMA regime, appellants and their (non-legal) advisers are permitted to present technical evidence directly to the panel. This is a valuable feature of the existing process that enables the tribunal to engage directly with the individuals who have the deepest understanding of the technical issues in dispute. If the transfer proceeds, the CAT's procedural rules should ensure that this remains an option for parties seeking to appeal.

4. Appeal Standard and Parameters (Questions 47 to 55)

Question 47: Should Regulatory Appeals be determined in accordance with the standard of review set out in paragraph 204(a)?

4.1 No. It is not clear to us from the Consultation what the intended effect of this proposal is and in particular whether - or to what extent - the intention is to change rather than simply to align the proposed standards of review. In those circumstances we are concerned that the uncertainty that this generates will in itself be detrimental to the operation of the appeals regime as well as having implications for investment in the sector. We would also not support a downgrading of the approach to review in these sectors.

4.2 More specifically, it is unclear whether – and if so in what way - the formulation proposed in the Consultation — that the tribunal should apply *"judicial review principles while taking due account of the merits"* —would differ from the standard as it has been interpreted and applied by the CMA and the courts including, for energy price control appeals, in the recent judgment in *Wales and West Utilities v GEMA* [2026].

4.3 The Committee would be opposed to any weakening of the substantive scope of review. An effective and rigorous appeals framework is essential to the proper functioning of the regulatory regime, and any dilution of the standard of review could undermine investor confidence and

reduce the incentive for regulators to ensure that their decisions are fully reasoned and supported by the evidence.

Question 48: Should the notice of appeal set out the grounds of appeal and indicate whether the regulator's decision was based on an error of fact, an error of law, or an error in the exercise of the regulator's discretion, as set out in paragraph 204(b)?

4.4 The Committee does not see any problem with a requirement to specify grounds of appeal, which is consistent with current practice.

4.5 However, in practice, we would expect most appeals to cite most or all of the possible grounds of appeal. Price control and regulatory appeals frequently involve overlapping errors. A methodological flaw in a regulator's analysis may simultaneously give rise to errors of fact, errors of law and errors of discretion. A requirement to specify grounds should not prevent a ground from being advanced on more than one basis, nor should it lead to artificial fragmentation of what is in substance a single complaint about the regulator's approach.

4.6 The Committee would also be concerned if an appeal raising a legitimate substantive complaint were at risk of being rejected on procedural grounds because the appellant had cited the wrong ground or categorised its challenge incorrectly. This concern is particularly acute given the tight timeframes for bringing regulatory appeals, which leave appellants with limited opportunity to refine their pleadings.

Question 49: Should parties be allowed to submit new evidence on appeal?

4.7 Yes. The Committee considers that the admission of new evidence should be permitted, subject to appropriate controls. This is consistent with the nature of these types of appeals which are setting prices or licence obligations on a forward-looking basis and so should take into account the latest information that is available to a decision maker.

4.8 The Committee recognises that there may need to be limits to this, e.g. to avoid incentivising late disclosure of information, but considers that the general framework of admissibility in both the current CMA proceedings and the CAT is sufficient and appropriate for this purpose.

Question 50: Should the cross-examination of witnesses be permitted, in line with the CAT Rules?

4.9 Yes. The Committee would not expect cross-examination to be a regular feature of these cases but as it is already an option at the CMA in an appropriate case there seems no reason that the CAT should not also have the discretion to permit cross-examination where it is necessary to test the evidence and assist the tribunal in reaching a just determination. Our view generally would be that the more inquisitorial style that is used at the CMA even in appeal hearings can be a more effective way of getting to the core issues in a case than formal cross-examination, particularly where there is technical complexity.

Question 51: In case the CAT quashes the decision, should the matter be remitted to the regulator, as proposed in paragraph 204(d)?

4.10 No. The Committee would favour a broader range of powers, with discretion for the CAT to choose the appropriate remedies approach depending on the facts of the case.

4.11 Under the current framework, the CMA in some circumstances has powers of both remittal and substitution. This means that where the correction required is mechanical and follows directly from the tribunal's findings — for example, an arithmetical adjustment to an element of a price control calculation — this can be addressed directly without requiring the matter to be remitted to the regulator. This avoids adding unnecessary cost and delay to the process. In more complex cases remittal may be the more appropriate option and the CMA has this option available to it as well.

4.12 If the power of substitution is removed or is not used in a particular case, the Committee considers that the CAT should be clearly empowered to binding and specific directions on the matters to be addressed on redetermination, to impose deadlines for the completion of the redetermination process, and to retain supervisory jurisdiction to ensure that the regulator gives proper effect to the tribunal's findings.

Question 52: Would the proposed appeal parameters set out in paragraph 204 create any barriers or challenges for the parties seeking to appeal a regulator's decision?

4.14 Yes. The Committee considers that the proposed parameters, taken together, would increase the cost, complexity, and duration of appeals and would reduce certainty at least in the short to medium term. Those costs and uncertainties are avoidable and – in addition to the potential impact on investment - would create barriers to effective access to justice.

Question 53: Should the new appeal replacing Water Redeterminations be overseen by the CAT in accordance with the appeal parameters set out in paragraph 204?

4.15 No. We do not consider that the case for transferring appeals from the CMA to the CAT has been made out for the reasons set out above. We note that it would be possible to bring the water price control redetermination process closer to the regimes that apply in other sectors (as proposed in the 2026 White Paper described in the Consultation) without changing identity of the decision maker.

Question 54: Should Water Regulatory References be converted into an appeal process, overseen by the CAT in accordance with the appeal parameters set out in paragraph 204?

4.16 No, we do not consider that the case for transferring appeals from the CMA to the CAT has been made out for the reasons set out above.

Question 55: Should Energy Regulatory References be removed to simplify the order-making process and ensure greater consistency with similar powers existing for other licensable activities?

4.17 Not sure. We would like to understand better why these provisions are currently problematic. The fact that there have been no cases where such references have been made suggests that these provisions are not causing a material issue.

5. Eligibility to Appeal or Intervene (Questions 56 to 59)

Question 56: Should eligibility criteria be harmonised across sectors?

5.1 Not sure. The Committee sees merit in harmonisation of eligibility criteria in principle, but notes that harmonisation is not an end in itself. The existing eligibility provisions in each sector

reflect the specific characteristics of the regulatory regime in question, and a one-size-fits-all approach may not be appropriate in all cases.

Question 57: In case of harmonised eligibility criteria for Regulatory Appeals and Telecoms Appeals, should the right to appeal be granted to (i) licence holders and companies holding an appointment, and (ii) persons whose interests are materially affected by the regulator's decision and bodies or associations representing such persons, including consumer bodies?

5.3 Not sure. The Committee would welcome clarification that the category of *"persons whose interests are materially affected"* is not intended to extend standing to individual end-consumers in sectors where such standing does not presently exist. Extending direct standing to individual end-consumers in sectors where their interests are already represented by regulators and consumer bodies could create significant case management difficulties and increase costs for all parties without a proportionate benefit.

The Committee considers that consumer bodies that can demonstrate sufficient interest should have the ability to participate in proceedings, but that appropriate case management mechanisms should be in place to ensure that their participation is constructive and proportionate.

Question 58: Should parties be required to seek the permission of the CAT to bring an appeal?

5.4 Not sure. The Committee notes that the vast majority of regulatory appeals are brought by regulated businesses that are clearly directly affected by the decision that is being challenged rendering the permission stage arguably unnecessarily. However, a permission stage is not unusual in a JR-style review process and can be an appropriate mechanism for filtering out unmeritorious claims at an early stage.

5.5 Our main concerns with the design of a permission stage are, first, that the regime should not create incentives for the regulator to oppose permission unnecessarily (e.g. in some appeals this may currently be necessary or desirable in order to secure sufficient time to prepare a defence). The time limits applicable to the proceedings should be designed to ensure that the regulator has a fixed and realistic period within which to prepare its defence, irrespective of whether the regulator contests the grant of permission.

5.6 Second, the time limits for seeking permission should be realistic, having regard to the complexity of regulatory decisions and the volume of material that an appellant may need to consider in formulating its grounds of appeal.

Question 59: Should third parties be permitted to intervene in an appeal, subject to obtaining permission from the CAT?

5.7 Yes. The Committee considers that intervention should be available, subject to appropriate controls. Interveners can provide valuable perspectives and evidence that assist the tribunal in reaching a fully informed determination and can be a cost-effective way to ensure that all relevant views are heard.

5.8 However, intervention can also be costly and time-consuming for all parties if not properly managed. The Committee considers that permission to intervene should be required in all cases, and that the CAT should have the power to manage the scope and form of an intervener's

participation. An intervener should be required to show a material interest in the outcome and the criteria for granting permission should include whether the proposed intervener has a material interest in the outcome, whether its participation is likely to assist the tribunal, and whether the intervention would be proportionate having regard to the additional costs and complexity it would introduce.

6. Costs (Questions 60 to 63)

Question 60: What barriers to appeal exist for consumer groups or other groups (such as environmental groups) in regulated sectors? Please specify the sector you are referring to.

6.1 The Committee notes that consumer groups and similar bodies considering bringing or participating in regulatory appeals will need to consider whether the costs, risks and time involved in pursuing litigation in an individual case (which may increase in the event that appeals are moved to the CAT) represent an appropriate use of their resources or a way to deliver on their overall mandate. This will not always be the case and, for example, in cases that concern detailed points around the design and accuracy of a benchmarking model, or the correct use of a time series of data, a consumer body that was not itself involved in the detail of the price control process may not be the best placed appellant.

Question 61: In addition to existing CAT Rules on cost recovery, what cost arrangements or other aspects of the appeal process could help ensure fair participation by all eligible parties in Regulatory Appeals and Telecoms Appeals?

6.2 The Committee considers that the CAT's existing broad discretion on costs should provide a sufficient framework. In this regard, the Committee notes that (in contrast to the position under the CMA regime) it would not be appropriate for the CAT to recover its institutional costs from the parties through the use of costs orders as this is not a feature of judicial processes. The CAT's wide discretion on costs, including in relation to the treatment of interveners, provides adequate flexibility to address the range of circumstances that may arise as regards inter partes costs.

Question 62: Should costs be capped for certain parties, such as consumer groups?

6.3 No. The Committee does not support the introduction of costs capping for specific categories of party. The Committee's concerns are as follows:

(a) the risk of adverse costs orders serves an important disciplinary function in litigation, incentivising parties to conduct proceedings efficiently and discouraging unmeritorious claims or interventions;

(b) if consumer bodies wish to bring appeals in their own right, they should bear the normal litigation risk associated with doing so, in the same way as any other appellant;

(c) if consumer bodies wish to intervene in proceedings brought by others, they have the ability to manage their exposure by choosing the extent and nature of their participation;

(d) costs capping for a particular category of party creates an uneven playing field, as the protection afforded to the capped party is not available to other parties to the proceedings; and

(e) it is not clear who would be expected to bear any shortfall arising from the application of a costs cap but it seems wholly inappropriate for a successful party to be required absorb costs that it would otherwise be entitled to recover purely because of the identity of the other party to the process.

Question 63. Should specific cost arrangements exist in relation to the costs incurred by regulators in defending their decisions?

6.4 In the Committee's view, the current arrangements should largely be preserved, and the CAT's discretion on costs is sufficient to accommodate the full range of circumstances that may arise in regulatory appeals.

Question 64. We welcome any further views on how to improve the effectiveness of Regulatory Appeals.

7.1 If reform is to be pursued, the Committee considers that clarity as to the timing of any change will be essential. This is urgent in the context of forthcoming price control periods, where regulated businesses and their investors require clarity as to the appellate framework that will apply. Any transition should be designed to ensure that appeals relating to decisions taken under the current framework are dealt with under the current rules.

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